

LAKE COUNTY PLANNING BOARD
May 10, 2017
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Sigurd Jensen, Bob Stone, Frank Mutch, Janet Camel, Dave Goss

STAFF PRESENT: Jacob Feistner, Wade Humphries, Lita Fonda

Steve Rosso called the meeting to order at 7:05 pm.

ALLEN SUBSEQUENT MINOR SUBDIVISION (7:05 pm)

Jacob Feistner noted project representatives Jack Duffey and Kim Uhde were here. He presented the staff report. (See attachments to minutes in the May 2017 meeting file for staff report.)

Steve pointed out Lakeside QRU (Quick Response Unit) was the responding EMS (Emergency Medical Services) provider for this location. Regarding the covenants in the third paragraph on page 1 of attachment 2, were there only 5 acres? Jacob believed there was another 5-acre piece to the south of this one to which this applied. Steve said the covenants as written wouldn't cover this land. The issue was whether or not to expand them to include this land. Jacob said his question also was whether or not that was the intent. Kim Uhde said he divided this and the covenants should have been on this property. He would like those same covenants to apply. Steve thought it would be up to the surveyor and agent to change the description of the property. The Board could do their review assuming that the covenants would be extended to this property.

Jack Duffey said he was comfortable with the staff report and offered to answer questions.

Steve checked that they'd gotten comments from the Rollins Volunteer Fire Department. On #7 of pg. 15, 'Polson Volunteer Fire District' should be 'Rollins Volunteer Fire Department'. On pg. 12, in III.2.Findings, the Rollins Fire Dept. should be included in the list of commenters and a sentence added that read, "Comments were not obtained from the Lakeside QRU, which is the EMS agency dispatched first in the Rollins Fire District; however, based on the comments from Polson Ambulance, it could be assumed that Lakeside QRU would have no concerns about providing emergency medical services." Also on pg. 12, in IV.2.Findings, he suggested adding 'and use of any necessary BMP's during construction activities' after 'management techniques'.

Frank asked if Flathead Electric Coop or Pacific Power and Light served this area. Kim said it was Flathead Electric Coop. Frank suggested adding 'Coop' after 'Flathead Electric' in III.2.Findings for clarity.

Motion made by Steve Rosso, and seconded by Frank Mutch, to recommend approval for this subdivision with findings of facts and conditions of preliminary approval as modified and corrected. Motion carried, all in favor.

REHBEIN LAKESHORE VARIANCE (7:24 pm)

Wade Humphries presented the staff report. (See attachments to minutes in the May 2017 meeting file for staff report.)

Frank asked if the existing slab dimensions were 10 feet by 24 feet. Wade explained the dimensions were 24 feet x 163 feet. The permitted width was supposed to be 10. It ended up being 24. Frank asked if staff proposed removing the excess slab.

Wade said that was a tough deal. Jacob added they were interested in ideas on how to bring that into compliance. Frank thought for concerns on sedimentation and pollution and so forth, he'd put a treated 2 x 6 on top of the slab that wasn't improved and plant it with something. Disturbing the slab was worse than leaving it.

Wade mentioned one idea was a stormwater runoff plan, not necessarily jackhammering out 14 feet of the structure but modifying the structure to divert water from directly entering the lake. This would be more of an inset drain than a curb. Steve said you'd slope the concrete to the drain. Jacob noted it was already sloped to the lake.

Frank asked about the riparian boundary along the property line. Wade said that was confusing. The riparian boundary line was another name for the side property line. Jacob added the riparian line was as it extended over the water.

Janet asked about the roof structure and if a drain system with a gutter would be included. Was there some sort of stormwater treatment for the structure? Wade said a storm runoff management plan was not included in the application. A condition would be that one would have to be received before a permit was granted.

Bob noted this was over 100 feet long. They were talking about mitigation for a 20-foot roof. What about mitigation for the other 80-plus feet that still had a big problem? This was a good opportunity. The planners agreed. Bob checked that the same owner still had the property. If this were a cheap construction job, they'd have it ripped out. It seemed like there was worry about having an expensive remedy. Had [the project] been checked? Jacob said they had no record of follow-up. Bob said they ought to follow up on things. Jacob agreed.

Steve was concerned about the existing structure without thinking about the roof item. If you tried to come up with the very worst way to develop the lakeshore protection zone and damage the water quality and environment of the lake, this is what you would do. He was concerned that if they didn't enforce something here, it would encourage people to ask forgiveness instead meeting the regulations.

Wade thought they had a unique opportunity now to mediate at least the stormwater runoff on this. The jackhammer approach would be too detrimental to the lake itself. They should mitigate what they could. Steve described one of the problems. The idea behind running stormwater into the soils was so vegetation would take up the nutrients as the water moved towards the lake through the soil. If there was no vegetation, for example if you ran the water to a hole at the back edge of the concrete slab to go down into the ground under the slab and then to

the lake, it didn't improve anything as far as the environment or water quality. Wade said the soil mantle would cleanse stormwater. Steve agreed it would take some things out but the nutrients would not be removed without some vegetation. Another thing was the edges of the roof where you'd put gutters to collect the roof water were below the edge of the rock wall. Other than drilling a hole to get it in the ground to run through the gravel under the slab (which he thought was nearly the same as running it across the concrete) you would have to pump it up above the rock wall and back into the soils behind the rock wall where there was some vegetation. He was confused on how they would be successful if they did that.

Steve checked if the contractor or homeowner called when a project was completed as was required in the regulations, or if anybody went out and looked. Jacob said that if somebody did, a note was put on the permit. Steve asked if there were questions about the property line setback or a variance issued with the original permit. Jacob replied no. Steve referred to boathouses. In the drawings such as attachment 5, he saw a planned layout of an underground structure that looked like living space. He referred to details that Wade identified as a kitchen. Steve didn't know of boathouses with kitchens. The photos in attachment 8 showed doors and windows such that you might be able to store a kayak in there. There certainly wasn't a rail system. Wade said things like kayaks, canoes and life vests were in there. Steve wanted to see this project cleaned up so it met the previous permit and then have the applicants come back. He asked where the dimensions of 19.2 by 17.22 feet came from. Wade supplied the lakeshore standards. If they were to go 19.9 they would be outside of the regulations. Steve said they proposed 16 feet. Wade read from 5-3.B.2.a Standards, starting at the bottom of pg. 20 of the lakeshore regulations regarding the location of boathouses and that a minimum distance of 10 feet was required. They were currently a little over 11 feet away from the high water mark. They could increase the 16 feet to 17.22 and still be within the regulations without needing a variance.

Steve considered what constituted part of a structure. For example if someone built a deck, patio or walkway next to a house, if they attached to or touched the house, it was considered part of the house and had to meet the setback. If there was a break between, such as a foot of open ground between the house and the walkway, it wasn't considered attached and didn't need to meet the setback. Where did the idea come from that by setting the roof down on the patio, it meant that it avoided some regulation? Wade said the existing structure is higher, wider and longer—in every dimension, it's out of compliance. If they attached the roof structure to the concrete patio, it would become a part of the structure and they would be essentially expanding a nonconformance. By not attaching it, it was an independent structure, which is what they were after. Steve asked how they decided that setting it on the concrete wasn't attaching it. Wade answered that when structures were side by side, they wanted some spacing but this was on top of another structure. Steve thought someone could cantilever a roof from the rock wall that was outside the lakeshore protection zone. Wade said the rock wall was a nonconforming structure. There was a retaining wall that you could see in the pictures that was attached to that rock wall and it extended well into the lakeshore protection zone. The patio touched the rock wall and therefore brought it into that zone. While the roof structure would touch, it was the nature of it being on top rather than beside. The weight of the structure would hold it down. Bob and Wade shared a concern about the structure ending up in the lake if you got enough wind. Wade spoke with several engineers and knowledgeable people who felt confident the wind wouldn't pick it up. Frank suggested putting treated posts in the ground away from the slab to hold that down.

Steve touched on discussion to limit the square footage of this patio and to do something to bring this into compliance. Was this the only impervious surface in the lakeshore protection zone? The photograph in attachment 3 shows another dock by the house with possible impervious surface behind the dock in the form of a retaining wall with a top, and also something on the very point. Would this reduce the square footage of 1745 for this patio?

Wade commented the NNW I-dock was a two-stall boathouse. A similar rock wall ran the length of that portion of the property. A concrete staircase and a concrete walkway were in front of the boathouse. Steve checked that there was an underground boathouse there too. Wade said they were grossly over their allowed impervious surface. Another idea was a deed restriction for the property that would limit the amount of impervious surfaces, and essentially stop future impervious surfaces for this property. He showed Bob the project location on the photo. Frank mentioned they were to focus on solutions.

Marc Carstens spoke as a representative for the project. This job came to them a few months back. They weren't involved with the original impervious surface areas. The request was to help obtain permits for a covering made out of timbers and non-reflective material over the front area of what looked like a bunker wall with windows. After many discussions, it came down to the fact that something was not permitted. He wasn't sure if ample leverage existed to jackhammer it. He could see things from both sides. Regulations were a good thing; it would be chaos without them. [People] hadn't always followed regulations but it was what it was. He couldn't conceive a functional stormwater management plan to accommodate the existing concrete surfaces. It would be far worse if it were asphalt or some sort of oil mixture hard surface. It was concrete, wide and sloped towards the lake. He didn't know if you could capture enough rainwater on the upland side of it and try [inaudible] through the surface of the existing patio. Frost troubled him in that scenario. If water was allowed to collect in there, in time it would frost-heave and start to break things up. He appreciated the thought of the timbers and flowers and dealing with that as a mantle to put the water in. The quantities were a problem. He didn't know if you could actually hold enough. It was boggling. Did you put in pumps to pump stormwater out of that area into a drainfield in the back? It would probably be a good idea in South Carolina but it froze here. There were spring thaws, spring runoffs and winter storms. How would they maintain the viability of a pump station and resultant drainfield. It was perplexing. This was why there was no stormwater management plan.

They were here because the applicant wanted to put an impervious surface over another impervious surface. If this was the first impervious surface, he would be indignant. He would want stormwater management plan and better control of how this thing was happening. It was [already] happening and he couldn't think of a remedial action. He couldn't see where putting an impervious surface over an impervious surface was degrading the environment more than it already was. Regarding aesthetics, as you could see from the photo, it looked like a bunker. It was a tough nut to crack. The developer wanted what he wanted. The planners wanted to uphold the regulations. He could understand both sides of it. Would the outcome make it better or change something?

Frank asked if it was a 4-inch slab and if it was cracked. Marc didn't know the dimension. It was stout and not cracked. The group reiterated it had been there since 2001. Frank said if it wasn't cracked, it had to be reinforced. He suggested drilling a bunch of holes in that part of the slab. It would be less devastating than jackhammering. At least it was cosmetic and allowed drainage. Marc said it would be 'kind of drainage'. You would be storing it underneath a cement slab behind a cement seawall, waiting for the 10% increase in volume when it freezes. Frank thought the water would go into the lake underground. Steve thought it might go too slowly. Usually before you poured a slab over an underground stormwater storage area, you created some openings in the soil so that there was volume there that could be filled with water. Frank said another way was a pump plan with no check valve or a check valve with a bypass so you could drain the line that went uphill in the winter and bypass it to a drain. You'd pump it out in the fall and hope that it didn't fill up, freeze and break up the dry well or whatever. There was no simple solution to it. Janet liked the sump idea. It would be costly. You could put additional concrete on top to get the slab to slope towards the center and put a drain towards the center with a sump underneath and have the water drain towards the center of the slab rather than into the lake. The sump would be lined with rocks and sand to try to filter out [inaudible]. Marc thought there would probably be structural issues. Janet agreed there could be. She was looking for a solution where it could drain towards the center of the slab and then filter out [inaudible—several speakers]. Steve said they needed to dig out under the slab to create some volume for the water to go. Janet said you'd have to excavate the hole and fill it with drain rock. Frank thought another solution was to hire an engineer to come up with a solution.

Steve referred to Marc's letter of March 20 and asked about the two adjacent lots also owned by this property owner. Marc described their location using attachment 3. Steve moved to attachment 1, where the subject lot was lot M. Tiffani Murphy of Carstens pointed to the adjacent lots A and B. Steve said Marc hinted at a house over the lake. Marc described this location using the attachments. Steve said it was between the I dock and the T dock. Marc said he had a better grasp of the situation now than he'd had in March. The owners acquired the property with a small house, which was currently vacant. There was docking off the T dock and the other structure. It wasn't as used as he'd thought in March. The project was somewhat in motion, in that they started out with certain understandings and the project was moving on them.

Dave inquired if someone were to propose a stormwater management plan, who had the authority to sign off on it. Jacob explained that the Planning Dept. signed off on it. They might require an engineer or someone qualified to prepare it. The Planning Dept. would approve or disapprove it. Dave asked if this proposal had not been made and the department had been made aware of the non-compliance of the existing structure, what recourse the department would have had. Jacob described some recent violations. One ended up in court and involved mediation. Yesterday, cease and desist orders were issued for two different properties. They were issued tickets from the sheriff and the department was working with them now to get lakeshore permits and to get their work permitted properly. A violation was a misdemeanor so it did become a criminal thing and could be pursued in that direction. Staff tried to work with them through an after-the-fact permit. In this case, he didn't know how they could have it permitted. It was a totally different circumstance. The others he just referenced were things that may be able to be permitted; he didn't know yet. Enforcement was a big issue for the department: what could they do and how much support did they have to get it done. In this case, it was a major question.

Bob asked about what happened in 2001 as far as permitting. Jacob replied the owner got a 2001 lakeshore permit issued. The available [records] for that permit were in the attachments. Bob worried about what would happen in the future if something wasn't done about this flagrant violation. Other people would refer to what happened or if it went to court. You couldn't let people ask for one thing, then do double or more [than what was permitted] and then have the gall to come and ask for something else on top of it, knowing staff would look at it. Were these people used to having their way no matter what? If that was the case, there were a lot of people like that who wanted to live on the lake. They could have some really big problems here. He wanted to avoid that. He just learned a little about what enforcement options were. Courts were scary to most people. This was a clean lake. This kind of precedent shouldn't be allowed. They needed to do something about the violation especially since no likely mitigation was available.

Steve noted an option given on pg. 7, section 3-1.B of the lakeshore regulations that required them to restore the lakeshore protection zone to its original condition or at least part of it. If they had to cut off 14 feet of that, cut it into pieces, lift the pieces out with a crane, haul them away and restore that part of the lakeshore, there was a provision here saying they could do that. He didn't know whether or not the County wanted to put that effort in and how hard the landowner would fight. The other mentioned was 3-6 under violations on pg. 11 and talked about misdemeanors and penalties. He couldn't approve more development on this property without some of the extreme violations that exist there now being fixed. The first step was if they were serious about wanting to bring their property into compliance or make some significant changes in what they had so [the County] could see that they cared a little about what mattered with the basis of having lakeshore protection regulations.

Frank liked the idea of a concrete saw, which was probably less damaging than jackhammers. Would you dig a trench and put straw bales along the lakeshore? Steve said yes. He talked about the retaining wall. It looked like gravels had been pushed against this so the water no longer came up against the retaining wall. That might change seasonally.

Bob wasn't trained as an engineer but he did know there was a lot of rip rap in this part of the state that was made out of concrete. Concrete wasn't the problem in the lake; the impervious surface and drainage were problems. At least it wasn't asphalt, which had poison in it. He'd like to see the property comply. Then the owner could come see them. Steve thought the possibly was good that if he were to cut off the outside 14 feet closest to the lake and revegetate that, he might find he wanted a different kind of roof from the one proposed. Rather than approve the roof and require 14 feet to be cut off, they could cut off the 14 feet, which might require them to cut off the sloped wall at the end of the bunker. Marc asked if that would include the retaining wall. Steve described what happened with retaining walls was you prevented erosion along the wall but the wave action was actually increased at the ends of the wall. Often times the property right next to those with old retaining walls would have a big cove that was washed out because of the wave action that occurred at the edge of the retaining wall.

Marc said if you sawed off the lakeside 14 feet of existing structure and left the seawall there, you created a reservoir situation that would take out the seawall too, so you might as well take that out too. They could put riprap there. Concrete riprap wasn't the worst thing in the world.

What was different in water treatment for water landing on poured concrete versus water landing on broken concrete? Steve assumed the concrete was at the shoreline. It didn't cover the whole 14 feet back to the now-smaller slab. Some soil, bushes, trees and plants with varying depths of roots would take up the nutrients out of the water before it washed down to the lake. The water going to the lake had few nutrients in it and didn't growth algae. That was why it made a difference.

Marc asked why you'd take 14 feet on the lakeside rather than the land side. Steve said that was up to the owner. That was one of the issues discussed when the revision of the lakeshore protections regulations were discussed. Currently 5 square feet of impervious surface per linear foot of frontage was allowed but nothing was said about where that impervious surface could be. In the draft regulations, there was some discussion of that, where if it was right along the lake it had to be tipped back so the water would run back into the vegetative buffer. Some people had a retaining wall with a sidewalk right behind it, for instance, where this would apply. It was up to them where they wanted the patio but they needed to get rid of some of it. Frank asked if he was talking about 14 feet along the length of the 163 feet and Steve confirmed. Steve said they were talking about almost 2000 square feet to remove. If they wanted to do that by having a section next to the bunker in front of the doors that was concrete up against the doors, then when they moved along that wall, they might cut out a big chunk of concrete and plant with vegetation. Maybe somewhere else they might cut out a wider section next to the shoreline and revegetate that. The idea would be to reduce the amount of concrete they had along that arced waterfront by 2000 square feet.

Dave listed a couple of concerns. One was obviously the concrete. He was also concerned about the potential message they were sending. They didn't want to send the message that begging forgiveness instead of doing it the right way in the first place was an acceptable way of doing business or they would be dealing with these kinds of issues on a regular basis. He wasn't a hydrologist or engineer. He didn't feel comfortable trying to come up with an acceptable plan. He would prefer to send the message that the plan in front of the Board tonight was not acceptable and a plan that didn't address the non-permitted issue would not be acceptable. It was up to the property owner to come up with the plan that was acceptable. He asked about options because in some areas if you had an egregious enough violation of regulations, the occupancy permit could be pulled for the property. That got attention in a hurry. He wasn't advocating that here but this was more than a minor variance of the permit.

Steve related that on Whitefish Lake, people were frustrated with misdemeanors for lakeshore violations. Quite a few landowners were interviewed who said the \$500 fine was negligible compared to the price of the house and the landscaping plan, and they'd just ignore the regulations, pay the fine and do it the way they wanted. That was certainly an issue. They could levy the fine and also make the person restore the lakeshore. That got their attention too. He didn't know what kind of teeth the County had if the person absolutely refused or chose to ignore the County. That was up to the Attorneys Office.

Bob said the Tribes' Shoreline Protection Office had a compliance officer and a compliance department. [Non-compliance] came up frequently enough. The compliance officer listed options like charging \$500 a day, \$25 a day or sending a letter. The days didn't start until the

letter wasn't answered by the person; if he did answer they'd give him some time to talk to them. \$500 a day added up even for people who could afford homes on Whitefish Lake. He didn't know what they had in their regulations for that. The Planning Board didn't have the power to do that. He didn't know if the Commissioners had that power. It would be interesting to find out. There ought to be something that scared people and kept them from doing this kind of stuff.

Marc could appreciate the concern for the regulations and the lake. This was installed in 2001. He thought it would be difficult to take punitive action against this landowner 16 years after it was constructed [inaudible] not need to look at the enforcement options available at the time of the infraction rather than after.

Wade mentioned he was a compliance officer for 3 ½ years for the City of Missoula, which was being a glorified legal assistant. When it got to that level, it was for the attorneys. They couldn't speculate like that.

Frank thought the solution was to reduce the slab and hire an engineer to do it in the best way. The owner could be given a square footage requirement and some sort of plan to mitigate the process of removing the slab and the best way to design what was left to reduce the runoff. He didn't favor punitive or policing. He thought this caused enough [penalty] and it was the letter of the law to restore the lakeshore to its condition. There had been other people who had been required to do it. That sent a strong message. He thought it would be politically acceptable to the Commissioners. Then the applicant could come back after complying if he still wanted a roof.

Steve commented because of the curvature of the patio, he didn't know where they measured the 163 feet. It would be great if they could put this into a CAD program and ask for the area so [the County] knew what the square footage was. If you were going to enforce this, you wanted to present something to [the applicants] that was right and had been well thought-out and so forth, and so his attorney didn't find errors. You wanted to be careful about what you asked them to do or what kind of requirement you put on. Also they could let the applicant know the setbacks from the property line were something [the Board] would be willing to consider for a variance if they were to clean up this existing patio. He thought it would be hard to meet that setback. Structures that were sitting on the ground were easier to move than those that were buried.

Motion made by Steve Rosso to recommend that the Commissioners require the patio area to be brought into compliance with the original permit and that [it] meets the lakeshore protection regulation limits as described in the July 2001 lakeshore regulations before considering further development on this property.

Dave asked if the Board needed to take some kind of action on the application itself so it didn't automatically go into effect due to lack of action. Jacob replied they had 90 days to respond to the application. Steve asked if a second motion was needed to deny the application. Jacob thought they could make a motion that referenced all three variances and their proposed action. The planners would talk to the Commissioners and see where they wanted to go with it. [Staff] would have to respond with a denial or approval within 90 days.

Motion seconded by Bob Stone.

Bob referred to the earlier comment about calculations, curvature and getting them perfect. He didn't think [the staff] needed to go there. If the applicant hired someone and they knew how many square feet were available to them, then they would do that. The less advice given to them about what to do here, the better it was, since [the Board] didn't know enough about engineering or hydrology. Steve agreed. In addition to meeting the square footage limits in the regulations, it might also be mentioned to them that they needed to consider any other impervious surfaces on the property that are in the lakeshore protection zone.

Motion carried, all in favor.

Motion made by Steve Rosso, and seconded by Dave Goss, [to recommend] for denial of the three variances until the non-conforming structure has been brought into compliance. Bob checked that didn't mean they automatically got what they were asking for but rather that it wouldn't be considered until then. Steve agreed. **Motion carried, all in favor.**

MINUTES (8:44 pm)

Minutes of Feb. 8, 2017 were considered by the Board with corrections offered by Steve. On pg. 3, in the 3rd line of the 4th paragraph, 'to savings and fuel and' was changed to 'to fuel savings, and'. On pg. 4, in the 3rd line of the 3rd paragraph, 'dimension' was changed to 'diminished'.

Motion by Bob Stone, and seconded by Frank Mutch, to approve the Feb. 8, 2017 meeting minutes as amended. Motion carried, 5 in favor (Steve Rosso, Sigurd Jensen, Bob Stone, Frank Mutch, Dave Goss) and one abstention (Janet Camel).

OTHER BUSINESS (8:46 pm)

Growth Policy update progress was mentioned. The group touched on fines and per day fines.

Meeting adjourned by Steve Rosso, chair, at 8:50 pm.